

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-201-E - ORDER NO. 1999-471
JULY 1, 1999

IN RE: The Limited, Inc.,)	ORDER DENYING
)	MOTIONS AND
Complainant/Petitioner,)	EXTENDING PREFILE
)	DEADLINES
vs.)	
)	
The Richard E. Jacobs Group, Inc.,)	
)	
Respondent/Defendant.)	
)	

✓ MR

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of The Richard E. Jacobs Group (Jacobs) to Dismiss or in the Alternative Extend Time in this complaint matter. Responses to the Motion were filed by The Limited, Inc.(Limited), South Carolina Electric & Gas Company (SCE&G), Duke Power (Duke) and Carolina Power and Light (CP&L). Pursuant to the reasoning stated below, the Motion is denied. We would also note that Limited moved that we find Jacobs in default. We also deny this motion, with reasoning to follow.

Jacobs moves to dismiss the Limited's complaint, or, in the alternative, for an extension of time to respond to the complaint. With regard to the dismissal request, Jacobs first asserts that the Limited's complaint does not state a cause of action against the Jacobs Group, and does not designate what relief it is seeking. First, we hold that these grounds are mooted by the fact that Jacobs has already answered the Limited's

complaint in a letter dated November 6, 1998. The answer asserts a jurisdictional defense and denies that Jacobs is reselling electricity, as asserted in the original complaint. The letter also denies any damage to the Limited, therefore denying that any relief should be granted. Jacobs cannot now claim that Limited did not state a cause of action or properly assert what relief it was seeking, since Jacobs went ahead and answered the complaint.

Even if we did not consider the letter of November 6, 1998 as an answer to the complaint, which we do, we hold that the first ground asserted for dismissal is without merit. The Limited asserts in its complaint letter the following: “The Richard E. Jacobs Group, Inc. clearly is reselling power at a higher cost than they pay for it at their Northwoods Mall location. Based on South Carolina law and previous conversations, this clearly violates existing rules and regulations.” The Limited also states in its complaint that Jacobs’ activities directly affect Limited by taking over from SCE&G the provision of electricity to Limited at Northwoods Mall. First, this Commission clearly has the authority to hear and redress any violations of statutes or regulations relating to the provision of electricity. See S.C. Code Ann. Sections 58-27-140, 58-27-150, 58-27-210, and 58-27-230. With regard to the request for relief, it could not be much clearer that Limited is seeking to require Jacobs Group to stop violating the laws of South Carolina as described in the complaint, if indeed we find that Jacobs is violating the laws of this State. If the Commission agrees that Jacobs has been in violation of those laws, it is within this Commission’s power to consider such further relief as may be appropriate because of that violation.

Second, Jacobs alleges that this Commission does not have jurisdiction to hear a dispute concerning the interpretation of a lease between two private parties. We disagree. Under the South Carolina Supreme Court case of Anchor Point v. Shoals Sewer and the Public Service Commission of South Carolina, the police powers of the Commission in its area of authority are dominant over the rights of individuals to contract. We believe that the issue of the resale of electricity for compensation without authority has been raised in this case, which is clearly an area within our jurisdiction. This matter clearly involves regulatory issues beyond the question of interpretation of a lease between two private parties. We hold that we have full jurisdiction to act on the complaint in this matter, pursuant to the statutory authority provided to us by the General Assembly as noted above.

Next, Jacobs states that Limited has admitted that it has named the wrong party when it states that Jacobs is not the landlord, and that the North Charleston Joint Venture is actually the landlord. As Limited says in its response, it has stated that North Charleston Joint Venture is the landlord, and Jacobs has begun serving as the provider of electricity. We agree with the Limited's view. We also agree that it appears that Jacobs has now removed any issue of it being exempt from this Commission's jurisdiction under a possible landlord-tenant exemption under S.C. Code Ann. Section 58-27-10 (1976).

Jacobs also moves in the alternative for a more definite statement. We must deny this relief. Jacobs apparently understood the original complaint well enough to answer it by letter dated November 6, 1998. We think a request for a more definite statement is therefore moot.

Finally, Jacobs moves in the alternative for an extension of time to respond. Again, Jacobs already responded on November 6, 1998, and therefore will not be prejudiced by our moving ahead with this complaint proceeding. We do not agree that the intervenors in this matter have filed “complaints,” therefore we deny Jacobs the opportunity to “answer” them. Jacobs will have ample opportunity to present all relevant evidence that it wishes to present at the hearing of this case.

The Limited moves that we find Jacobs in default for failure to answer the complaint. We deny this motion, however, since we have found that Jacobs answered the complaint with its letter of November 6, 1998.

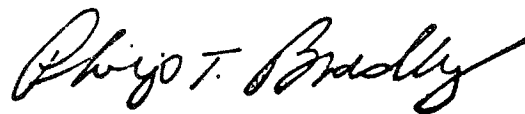
In the interest of fairness, and the fact that these issues are so hotly contested, we do grant an extension to July 7, 1999 for the respondent Jacobs, the intervenors, and the Commission Staff to prefile their testimony and exhibits. All testimony and exhibits must be served on and placed physically in the hands of opposing parties by the close of business on July 7, 1999. Also, no discovery may be served by one party on any other party at this time.

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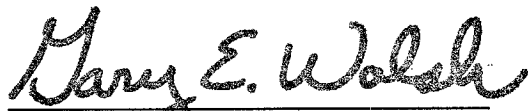
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)